IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 196 of 2006
In
COMPANY APPLICATION No. 156 of 2006
With
COMPANY PETITION No. 197 of 2006
In
COMPANY APPLICATION No. 157 of 2006
With
COMPANY PETITION No. 198 of 2006
In
COMPANY APPLICATION No. 158 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MICA RUSHIL PVT. LTD. - Petitioner(s)
Versus
. - Respondent(s)

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Appearance :
MR ASHWIN L SHAH for Petitioner(s) : 1,
MR PURVISH J MALKAN for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/01/2007

COMMON ORAL JUDGMENT

1. These petitions are filed under Sections 391 to 394 of the Companies Act; 1956. The Company Petition No. 196 of 2006 is filed by Mica Rushil Private Limited and Company Petition No. 197 of 2006 is filed by Rushil High Pressure Laminates Private Limited (both transferor companies) and Company Petition No.198 of 2006 is filed by Rushil Decor Private Limited (transferee company) for sanction of the scheme of amalgamation of transferor companies with the transferee company. It is submitted that all the said companies are registered in the State of Gujarat and are carrying on their businesses in the State of Gujarat.

2. The petitioners have set out their objects so also the purpose of evolving the scheme. It is submitted that all the said companies are closely held private companies and are carrying on same and similar business. The registered office of all the companies are situated in the same premises and their plants are situated within the radius of about 7 kms only. It is pointed out that the scheme, if sanctioned, would result in efficient and proper management of

the business of the companies. It is submitted that the petitioners have complied with the statutory provisions.

3. It is submitted that as per the directions given by the Hon'ble Court by order dated 31st March, 2006 in Company Application No. 156 of 2005, the meetings of the secured and unsecured creditors and members of Mica Rushil Private Limited (transferor No.1 company) were held and all the secured and unsecured creditors and members have unanimously approved the proposed scheme of amalgamation.

It is also further submitted that as per the directions given by the Hon'ble Court by order dated 31st March, 2006 in Company Application No. 156 of 2005, the meetings of secured and unsecured creditors and members of the Rushil High Pressure Laminates Private Limited (transferor No.2 company) were held on 29th April, 2006 and a resolution came to be passed unanimously approving the proposed scheme of amalgamation.

It is also further submitted that as per the directions given by the Hon'ble Court by order dated

31st March, 2006 in Company Application No. 158 of 2005, the meetings of the secured creditors and unsecured creditors and members of the transferee company were held on 29th April, 2006, however, at the request of the secured creditors, their meeting was adjourned to 29th July, 2006 and at the meeting of the unsecured creditors and members of the transferee company, resolution was passed unanimously approving the scheme of amalgamation. It is further submitted that after the meeting of the secured creditors was adjourned at their request as aforesaid, they were fully paid up and in their place UTI Bank Limited, Ahmedabad was substituted as secured creditor of the transferee company and the said UTI Bank Limited has given consent in writing to the said scheme.

4. The copy of the scheme is annexed and its salient features are pointed out. It is contended that if the scheme is sanctioned, it will be for the benefit of the companies. Since compliance with the necessary provisions has been made and due declarations also set out, the learned counsel seeks sanction to the scheme of amalgamation.

5. After the petitions were admitted, the dates of

their hearing were duly advertised in two daily local newspapers viz. “Times of India” (English) and “Divya Bhaskar” (Gujarati) – both Ahmedabad edition and affidavit of advertisement and service of notices have been filed in each of the Company Petitions. The publication in the Government Gazette is dispensed with. No objections are received by this Court opposing the proposed scheme of amalgamation of transferor companies with the transferee company.

6. Notices of the petitions have been served upon the Central Government and Shri P.J.Malkan, learned Additional Central Government Standing Counsel appeared on behalf of the Central Government and an affidavit affirmed by the Assistant Registrar of the Companies in the office of ROC, Gujarat as authorized by the Regional Director, Western Region, Ministry of Company Affairs, Government of India along with letter of the Regional Director on behalf of the Central Government dated 21st December, 2006 is placed on record. The Regional Director has raised the following objections :-

“(1) As per exchange ratio given in the Scheme the transferee company will issue equity share of

Rs.67,000 to the shareholders of the transferor company, but the transferee company is not having sufficient authorized capital to issue such shares hence before issue of shares for implementation of the scheme. Hence the transferee company may be directed to comply with the provisions of section 94/97 of the Companies Act, 1956 and file form No.5 with prescribed filing fee according to Schedule X of the Companies Act, 1956 for increasing the authorized capital.

(2) The valuer has not given exchange ratio for issue of shares by the transferee company to the shareholders of the transferor companies."

7. A further affidavit has been filed on behalf of the respective companies dated 21st December, 2006. It is submitted that the transferee company has already increased its authorized capital so as to able to allot the shares to the transferor companies as per the scheme. A copy of the resolution passed by the shareholders of the transferee company has been produced with the affidavit of the Director of the transferee company. Along with the said affidavit, certificates of the valuation of the shares of the transferor companies and the transferee company and also a certificate of exchange ratio for the exchange of the shares in the transferor companies

for the shares in the transferee company are produced. Similar certificates are also produced with the affidavits of the Directors of the transferee company.

8. The Official Liquidator has submitted its report pursuant to the directions given by this Court in the petition of the transferee company wherein, it is submitted that the affairs of the transferee company have not been conducted in a manner prejudice to the interest of the members or the public interest.

9. I have heard Shri A.L.Shah, learned advocate appearing for the petitioners in all the three petitions. I am satisfied on perusal of the petitions and annexures so also the aforesaid affidavits that no prejudice will be caused, if the scheme as proposed by the petitioners, is sanctioned. So far as the objections raised by the Regional Director on behalf of the Central Government are concerned, they are already met with by the transferee company as well as the transferor companies and as per the affidavits dated 21st December, 2006, the transferee company has already passed a resolution to increase its authorized

capital to issue shares to the transferor companies and have agreed to comply with the provisions of Sections 391 to 394 of the Companies Act, 1956 and filed form No.5 with prescribed filing fees according to Schedule – X of the Companies Act, 1956 for increasing the authorized capital. The valuer has also given exchange ratio for issuance of the shares by the transferee company to the shareholders of the transferor companies. Having complied with and met with all the objections raised by the Central Government, there does not appear to be any impediment in granting the sanction to the scheme of amalgamation as proposed. It appears that the amalgamation would be to the mutual advantage of the transferor companies and transferee company. There is no reason for disapproving the scheme of amalgamation now having met with all the objections raised by the Central Government.

10. For the reasons stated above, all the three petitions i.e. Company Petition Nos.196 of 2006, 197 of 2006 and 198 of 2006 are allowed. Prayers in terms of paragraph – 22 of Company Petition Nos.196 of 2006 and 197 of 2006 and in terms of paragraph – 23 of Company Petition No. 198 of 2006 are hereby granted. The scheme of amalgamation (Annexure – B to

the respective petitions) is hereby sanctioned. These petitions are disposed of accordingly.

11. So far as costs to be paid to the Central Government Standing Counsel is concerned, it is quantified at Rs.3500/- per petition and the same may be paid to Shri P.J.Malkan, learned Additional Central Government Standing Counsel by the respective petitioner companies.

[M.R.Shah, J.]

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